

Subchapter 3.200 Domestic Relations Actions

Rule 3.201 Applicability of Rules

- (A) Subchapter 3.200 applies to
 - (1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, family support under MCL 552.451 et seq.; MSA 25.222(1) et seq., the custody of minors under MCL 722.21 et seq.; MSA 25.312(1) et seq., and visitation with minors under MCL 722.27b; MSA 25.312(7b), and to
 - (2) proceedings that are ancillary or subsequent to the actions listed in subrule (A)(1) and that relate to
 - (a) the custody of minors,
 - (b) visitation with minors, or
 - (c) the support of minors and spouses or former spouses.
- (B) As used in this subchapter with regard to child support, the terms "minor" or "child" may include children who have reached the age of majority, in the circumstances where the legislature has so provided.
- (C) Except as otherwise provided in this subchapter, practice and procedure in domestic relations actions is governed by other applicable provisions of the Michigan Court Rules.

Rule 3.202 Capacity to Sue

- (A) Minors and Incompetent Persons. Except as provided in subrule (B), minors and incompetent persons may sue and be sued as provided in MCR 2.201.
- (B) Emancipated Minors. An emancipated minor may sue and be sued in the minor's own name, as provided in MCL 722.4e(1)(b); MSA 25.244(4e)(1)(b).

Rule 3.203 Process

- (A) Except as otherwise allowed by this rule, process must be served as provided in MCR 2.105.

- (B) Notice to Friend of the Court. If a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or spousal support is requested, the parties must provide the friend of the court with a copy of all pleadings and other papers filed in the action. The copy must be marked "friend of the court" and submitted to the court clerk at the time of filing. The court clerk must send the copy to the friend of the court.
- (C) Notice to Prosecuting Attorney. In an action for divorce or separate maintenance in which a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney when required by law. Service must be made at the time of filing by providing the court clerk with an additional copy marked "prosecuting attorney." The court clerk must send the copy to the prosecuting attorney.
- (D) Service of Informational Pamphlet. If a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or spousal support is requested, the plaintiff must serve with the complaint a copy of the friend of the court informational pamphlet required by MCL 552.505(a); MSA 25.176(5)(a). The proof of service must state that service of the informational pamphlet has been made.

Rule 3.204 Proceedings Affecting Minors

- (A) Unless otherwise provided by statute, original actions under MCL 722.21 et seq.; MSA 25.312(1) et seq. that are not ancillary to any other action must be filed in the circuit court for the county in which the minor resides.
- (B) If an action is pending in circuit court for the support or custody of a minor, or for visitation with a minor, or the circuit court has continuing jurisdiction over such matters because of a prior action, a subsequent action for support, custody, or visitation with regard to that minor must be initiated as an ancillary proceeding.
- (C) If a new action for support is filed in a circuit court in which a party has an existing or pending support obligation, the new case must be assigned to the same

judge to whom the other case is assigned, pursuant to MCR 8.111(D).

Rule 3.205 Prior and Subsequent Orders and Judgments
Affecting Minors

- (A) Jurisdiction. If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.
- (B) Notice to Prior Court, Friend of the Court, Juvenile Officer, and Prosecuting Attorney.
 - (1) As used in this rule, "appropriate official" means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved.
 - (2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must mail written notice of proceedings in the subsequent court to the attention of
 - (a) the clerk or register of the prior court, and
 - (b) the appropriate official of the prior court.
 - (3) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known.
 - (4) The notice requirement of this subrule is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21-day period, if required by the best interests of the minor.
- (C) Prior Orders.
 - (1) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order.

- (2) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, except as provided by law.
- (D) Duties of Officials of Prior and Subsequent Courts.
 - (1) Upon receipt of the notice required by subrule (B), the appropriate official of the prior court
 - (a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and
 - (b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.
 - (2) Upon request of the prior court, the appropriate official of the subsequent court
 - (a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and
 - (b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.
 - (3) If a circuit court awards custody of a minor pursuant to MCL 722.26b; MSA 25.312(6b), the clerk of the circuit court must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of the minor as a result of the guardianship proceedings, regardless whether there is a request.
 - (4) Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take the steps necessary to implement the order in the prior court.

Rule 3.206 Pleading

- (A) Information in Complaint.
 - (1) Except for matters considered confidential by statute or court rule, in all domestic relations

actions, the complaint must state

- (a) the allegations required by applicable statutes;
 - (b) the residence information required by statute;
 - (c) the complete names of all parties; and
 - (d) the complete names and dates of birth of any minors involved in the action, including all minor children of the parties and all minor children born during the marriage.
- (2) In a case that involves a minor, or if child support is requested, the complaint also must state whether any Michigan court has prior continuing jurisdiction of the minor. If so, the complaint must specify the court and the file number.
- (3) In a case in which the custody of a minor is to be determined, the complaint or an affidavit attached to the complaint also must state the information required by MCL 600.659; MSA 27A.659.
- (4) The caption of the complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff or petitioner, or of a plaintiff or petitioner appearing without an attorney:
- (a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.
 - (b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition has been previously filed in [this court]/[____Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.
- (5) In an action for divorce, separate maintenance,

annulment of marriage, or affirmation of marriage, regardless of the contentions of the parties with respect to the existence or validity of the marriage, the complaint also must state

- (a) the names of the parties before the marriage;
 - (b) whether there are minor children of the parties or minor children born during the marriage;
 - (c) whether a party is pregnant;
 - (d) the factual grounds for the action, except that in an action for divorce or separate maintenance the grounds must be stated in the statutory language, without further particulars; and
 - (e) whether there is property to be divided.
- (6) A party who requests spousal support in an action for divorce, separate maintenance, annulment, affirmation of marriage, or spousal support, must allege facts sufficient to show a need for such support and that the other party is able to pay.
- (7) A party who requests an order for personal protection or for the protection of property, including but not limited to restraining orders and injunctions against domestic violence, must allege facts sufficient to support the relief requested.

(B) Verified Statement.

- (1) In an action involving a minor, or if child support or spousal support is requested, the party seeking relief must attach a verified statement to the copies of the papers served on the other party and provided to the friend of the court, stating
- (a) the last known telephone number, post office address, residence address, and business address of each party;
 - (b) the social security number and occupation of each party;
 - (c) the name and address of each party's

employer;

- (d) the estimated weekly gross income of each party;
 - (e) the driver's license number and physical description of each party, including eye color, hair color, height, weight, race, gender, and identifying marks;
 - (f) any other names by which the parties are or have been known;
 - (g) the name, age, birth date, social security number, and residence address of each minor involved in the action, as well as of any other minor child of either party;
 - (h) the name and address of any person, other than the parties, who may have custody of a minor during the pendency of the action;
 - (i) the kind of public assistance, if any, that has been applied for or is being received by either party or on behalf of a minor, and the AFDC and recipient identification numbers; if public assistance has not been requested or received, that fact must be stated; and
 - (j) the health care coverage, if any, that is available for each minor child; the name of the policyholder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number.
- (2) The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party.
 - (3) If any of the information required to be in the verified statement is omitted, the party seeking relief must explain the omission in a sworn affidavit, to be filed with the court.

(C) Attorney Fees and Expenses.

- (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

Rule 3.207 Ex Parte, Temporary, and Protective Orders

- (A) Scope of Relief. The court may issue ex parte and temporary orders with regard to any matter within its jurisdiction, and may issue protective orders against domestic violence as provided in subchapter 3.700.
- (B) Ex Parte Orders.
 - (1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.
 - (2) The moving party must arrange for the service of true copies of the ex parte order on the friend of the court and the other party.
 - (3) An ex parte order is effective upon entry and enforceable upon service.
 - (4) An ex parte order remains in effect until modified or superseded by a temporary or final order.
 - (5) An ex parte order providing for child support, custody, or visitation pursuant to MCL 722.27a; MSA 25.312(7a), must include the following notice:

"NOTICE:

"1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the

"written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who

obtained the order.

"2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

"3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. Even if an objection is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order."

(6) In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to the friend of the court and the other party, within 14 days after the order is served.

(a) If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed.

(b) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.

(7) The provisions of MCR 3.310 apply to temporary restraining orders in domestic relations cases.

(C) Temporary Orders.

(1) A request for a temporary order may be made at any time during the pendency of the case by filing a verified motion that sets forth facts sufficient to support the relief requested.

(2) A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a

written objection or motion as provided in subrules (B)(5) and (6).

- (3) A temporary order may be modified at any time during the pendency of the case, following a hearing and upon a showing of good cause.
- (4) A temporary order must state its effective date and whether its provisions may be modified retroactively by a subsequent order.
- (5) A temporary order remains in effect until modified or until the entry of the final judgment or order.
- (6) A temporary order not yet satisfied is vacated by the entry of the final judgment or order, unless specifically continued or preserved. This does not apply to support arrearages that have been assigned to the state, which are preserved unless specifically waived or reduced by the final judgment or order.

Rule 3.208 Friend of the Court

- (A) General. The friend of the court has the powers and duties prescribed by statute, including those duties in the Friend of the Court Act, MCL 552.501 et seq.; MSA 25.176(1) et seq., and the Support and Visitation Enforcement Act, MCL 552.601 et seq.; MSA 25.164(1) et seq.
- (B) Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, visitation, or custody.
 - (1) If a party has failed to comply with an order or judgment, the friend of the court may petition for an order to show cause why the party should not be held in contempt.
 - (2) The order to show cause must be served personally or by ordinary mail at the party's last known address.
 - (3) The hearing on the order to show cause may be held no sooner than seven days after the order is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order is mailed.
 - (4) If the party fails to appear in response to the order to show cause, the court may issue an order for arrest.

(5) The relief available under this rule is in addition to any other relief available by statute.

(6) The friend of the court may petition for an order of arrest at any time, if immediate action is necessary.

(C) Allocation and Distribution of Payments.

(1) Except as otherwise provided in this subrule, all payments shall be allocated and distributed as required by the guidelines established by the state court administrator for that purpose.

(2) If the court determines that following the guidelines established by the state court administrator would produce an unjust result in a particular case, the court may order that payments be made in a different manner. The order must include specific findings of fact that set forth the basis for the court's decision, and must direct the payer to designate with each payment the name of the payer and the payee, the case number, the amount, and the date of the order that allows the special payment.

(3) If a payer with multiple cases makes a payment directly to the friend of the court rather than through income withholding, the payment shall be allocated among all the cases unless the payer requests a different allocation in writing at the time of payment and provides the following information about each case for which payment is intended:

(a) the name of the payer,

(b) the name of the payee,

(c) the case number,

(d) the amount designated for that case.

(4) A notice of income withholding may not be used by the friend of the court or the state disbursement unit to determine the specific allocation or distribution of payments.

(D) Notice to Attorneys.

(1) Copies of notices required to be given to the parties also must be sent to the attorneys of record.

- (2) The notice requirement of this subrule remains in effect until 21 days after judgment is entered or until postjudgment matters are concluded, whichever is later.

Rule 3.209 Suspension of Enforcement and Dismissal

(A) Suspension of Enforcement.

- (1) Because of a reconciliation or for any other reason, a party may file a motion to suspend the automatic enforcement of a support obligation by the friend of the court. Such a motion may be filed before or after the entry of a judgment.
- (2) A support obligation cannot be suspended except by court order.

- (B) Dismissal. Unless the order of dismissal specifies otherwise, dismissal of an action under MCR 2.502 or MCR 2.504 cancels past-due child support, except for that owed to the State of Michigan.

Rule 3.210 Hearings and Trials

(A) In General.

- (1) Proofs or testimony may not be taken in an action for divorce or separate maintenance until the expiration of the time prescribed by the applicable statute, except as otherwise provided by this rule.
- (2) In cases of unusual hardship or compelling necessity, the court may, upon motion and proper showing, take testimony and render judgment at any time 60 days after the filing of the complaint.
- (3) Testimony may be taken conditionally at any time for the purpose of perpetuating it.
- (4) Testimony must be taken in person, except that the court may allow testimony to be taken by telephone or other electronically reliable means, in extraordinary circumstances.

(B) Default Cases.

- (1) Default cases are governed by MCR 2.603.
- (2) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on

the default of the defendant because of failure to appear at the hearing or by consent. Every case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.

- (3) If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court.
- (4) If the court determines that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment in conformity with the court's opinion.
- (5) If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it.

(C) Custody of a Minor.

- (1) When the custody of a minor is contested, a hearing on the matter must be held within 56 days
 - (a) after the court orders, or
 - (b) after the filing of notice that a custody hearing is requested,

unless both parties agree to mediation under MCL 552.513; MSA 25.176(13) and mediation is unsuccessful, in which event the hearing must be held within 56 days after the final mediation session.

- (2) If a custody action is assigned to a probate judge pursuant to MCL 722.26b; MSA 25.312(6b), a hearing on the matter must be held by the probate judge within 56 days after the case is assigned.
- (3) The court must enter a decision within 28 days after the hearing.
- (4) The notice required by this subrule may be filed as a separate document, or may be included in another paper filed in the action if the notice is mentioned in the caption.
- (5) If a report has been submitted by the friend of the court, the court must give the parties an opportunity to review the report and to file objections before a

decision is entered.

- (6) The court may extend for good cause the time within which a hearing must be held and a decision rendered under this subrule.
- (D) The court must make findings of fact as provided in MCR 2.517, except that
 - (1) findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order, and
 - (2) the court may distribute pension, retirement, and other deferred compensation rights with a qualified domestic relations order, without first making a finding with regard to the value of those rights.

Rule 3.211 Judgments and Orders

- (A) Each separate subject in a judgment or order must be set forth in a separate paragraph that is prefaced by an appropriate heading.
- (B) A judgment of divorce, separate maintenance, or annulment must include
 - (1) the insurance and dower provisions required by MCL 552.101; MSA 25.131;
 - (2) a determination of the rights of the parties in pension, annuity, and retirement benefits, as required by MCL 552.101(4); MSA 25.131(4);
 - (3) a determination of the property rights of the parties; and
 - (4) a provision reserving or denying spousal support, if spousal support is not granted; a judgment silent with regard to spousal support reserves it.
- (C) A judgment or order awarding custody of a minor must provide that
 - (1) the domicile or residence of the minor may not be moved from Michigan without the approval of the judge who awarded custody or the judge's successor, and
 - (2) the person awarded custody must promptly notify the friend of the court in writing when the minor is moved

to another address.

(D) A judgment or order awarding child support or spousal support must

- (1) provide for income withholding as required by MCL 552.604; MSA 25.164(4), and state the payer's source of income and the source's address, if known;
- (2) set forth the parties' residence addresses, and require parties over whom the court has obtained jurisdiction to inform the friend of the court of any subsequent change of address or employment;
- (3) provide for the payment of statutory fees, if child support is to be paid through the office of the friend of the court; and
- (4) provide that the support be paid through the office of the friend of the court, unless otherwise stated in the judgment or order; if an order is silent as to method of payment, support must be paid through the office of the friend of the court.

(E) A judgment or order awarding child support also must

- (1) specify the amount of support both at the time of judgment and as the number of children for whom there is a support obligation decreases;
- (2) provide for payment until the child reaches the age of 18, and may provide for payment after the age of 18, as allowed by law;
- (3) provide for health care coverage as required by MCL 722.27; MSA 25.312(7) and MCL 722.3; MSA 25.244(3);
- (4) provide for the preservation of child support arrearages owing to the state on the date of the entry of the judgment, whether the arrearages arose under a temporary child support order or under a separate judgment entered pursuant to MCL 552.451 et seq.; MSA 25.222(1) et seq.; and
- (5) contain the following provision regarding nonretroactive support, as required by MCL 552.603(10); MSA 25.164(3)(10):

"Except as otherwise provided in section 3 of the support and visitation enforcement act, Act No. 295 of

the Public Acts of 1982, being section 552.603 of the Michigan Compiled Laws, a support order that is part of a judgment or is an order in a domestic relations matter as that term is defined in section 31 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.531 of the Michigan Compiled Laws, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification."

- (F) Unless otherwise ordered, all support arrearages owing to the state are preserved upon entry of a final order or judgment. Upon a showing of good cause and notice to the friend of the court, the prosecuting attorney, and other interested parties, the court may waive or reduce such arrearages.
- (G) Within 21 days after the court renders an opinion or the settlement agreement is placed on the record, the moving party must submit a judgment, order, or a motion to settle the judgment or order, unless the court has granted an extension.
- (H) Friend of the Court Review. For all judgments and orders containing provisions identified in subrules (C), (D), (E), and (F), the court may require that the judgment or order be submitted to the friend of the court for review.
- (I) Service of Judgment or Order.
 - (1) When a judgment or order is obtained for temporary or permanent spousal support, child support, or separate maintenance, the prevailing party must immediately deliver one copy to the court clerk. The court clerk must write or stamp "true copy" on the order or judgment and file it with the friend of the court.
 - (2) The party securing entry of a judgment or order that provides for child support or spousal support must serve a copy on the party ordered to pay the support, as provided in MCR 2.602(D)(1), even if that party is in default.
 - (3) The record of divorce and annulment required by MCL 333.2864; MSA 14.15(2864) must be filed at the time of the filing of the judgment.

(A) Motion.

- (1) A party, court-ordered custodian, or friend of the court may move for the postjudgment transfer of a domestic relations action in accordance with this rule, or the court may transfer such an action on its own motion. A transfer includes a change of venue and a transfer of all friend of the court responsibilities. The court may enter a consent order transferring a postjudgment domestic relations action, provided the conditions under subrule (B) are met.
- (2) The postjudgment transfer of an action initiated pursuant to MCL 780.151 et seq.; MSA 25.225(1) et seq., is controlled by MCR 3.214.

(B) Conditions.

- (1) A motion filed by a party or court-ordered custodian may be granted only if all of the following conditions are met:
 - (a) the transfer of the action is requested on the basis of the residence and convenience of the parties, or other good cause consistent with the best interests of the minor;
 - (b) neither party nor the court-ordered custodian has resided in the county of current jurisdiction for at least 6 months prior to the filing of the motion;
 - (c) at least one party or the court-ordered custodian has resided in the county to which the transfer is requested for at least 6 months prior to the filing of the motion; and
 - (d) the county to which the transfer is requested is not contiguous to the county of current jurisdiction.
- (2) When the court or the friend of the court initiates a transfer, the conditions stated in subrule (B)(1) do not apply.

(C) Transfer Order.

- (1) The court ordering a postjudgment transfer must enter all necessary orders pertaining to the certification and transfer of the action. The transferring court

must send to the receiving court all court files and friend of the court files, ledgers, records, and documents that pertain to the action. Such materials may be used in the receiving jurisdiction in the same manner as in the transferring jurisdiction.

(2) The court may order that any past-due fees and costs be paid to the transferring friend of the court office at the time of transfer.

(3) The court may order that one or both of the parties or the court-ordered custodian pay the cost of the transfer.

(D) Filing Fee. An order transferring a case under this rule must provide that the party who moved for the transfer pay the statutory filing fee applicable to the court to which the action is transferred, except where MCR 2.002 applies. If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise. In either event, the transferring court must submit the filing fee to the court to which the action is transferred, at the time of transfer. If the court or the friend of the court initiates the transfer, the statutory filing fee is waived.

(E) Physical Transfer of Files. Court and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by another secure method of transfer.

Rule 3.213 Postjudgment Motions and Enforcement

Postjudgment motions in domestic relations actions are governed by MCR 2.119.

Rule 3.214 Actions Under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) and the Uniform Interstate Family Support Act (UIFSA).

(A) Governing Rules.

(1) Actions under the Revised Uniform Reciprocal Enforcement of Support Act, MCL 780.151 et seq.; MSA 25.225(1) et seq., and the Uniform Interstate Family Support Act, MCL 552.1101 et seq., are governed by the rules applicable to other civil actions, except as otherwise provided by that act and this rule.

(2) "Support Order," as used in this rule, for RURESA cases

is defined by MCL 780.153b(8); MSA 25.225(3b)(8), and for UIFSA cases is defined by MCL 552.1104 (i).

(B) Transfer; Initiating and Responding RURESA Cases.

- (1) If a Michigan court initiates a RURESA action and there exists in another Michigan court a prior valid support order, the initiating court must transfer to that other court any RURESA order entered in a responding state. The initiating court must inform the responding court of the transfer.
- (2) If a court in another state initiates a RURESA action and there exists in Michigan a prior valid support order, the responsive proceeding should be commenced in the court that issued the prior valid support order. If the responsive proceeding is commenced erroneously in any other Michigan court and a RURESA order enters, that court, upon learning of the error, must transfer the RURESA order to the court that issued the prior valid support order. The transferring court must inform the initiating court of the transfer.
- (3) A court ordering a transfer must send to the court that issued the prior valid support order all pertinent papers, including all court files and friend of the court files, ledgers, records, and documents.
- (4) Court files and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by other secure method.
- (5) The friend of the court office that issued the prior valid support order must receive and disburse immediately all payments made by the obligor or sent by a responding state.

(C) Sending Notices in UIFSA cases. The friend of the court office shall send all notices and copies of orders required to be sent by the tribunal under the Uniform Interstate Family Support Act, MCL 552.1101 et seq.

Rule 3.215 Domestic Relations Referees

- (A) Qualifications of Referees. A referee appointed by the chief judge of the circuit pursuant to MCL 552.507(1); MSA 25.176(7)(1) must be a member in good standing of the State Bar of Michigan. A friend of the court who is not a lawyer, but who is serving as a referee at the time of adoption of this rule, may continue to serve. A successor must meet the

qualifications established by this rule.

(B) Referrals to the Referee.

- (1) The chief judge may refer motions of a particular kind to a referee, by administrative order.
- (2) To the extent allowed by law, the judge to whom an action is assigned may refer other motions to a referee
 - (a) on written stipulation of the parties,
 - (b) on written motion by a party, or
 - (c) on the judge's own initiative.

(C) Scheduling of the Referee Hearing.

- (1) Within 14 days after receiving a motion under subrule (B)(1) or a referral under subrule (B)(2), the referee must schedule the matter for hearing.
- (2) The referee must serve a notice of hearing on the attorneys for the parties, or on the parties if they are not represented by counsel. The notice of hearing must clearly state that the matter will be heard by a referee.

(D) Conduct of Hearings.

- (1) The Michigan Rules of Evidence apply to referee hearings.
- (2) A referee must provide the parties with notice of the right to request a judicial hearing by giving
 - (a) oral notice during the hearing, and
 - (b) written notice in the recommendation for an order.
- (3) Testimony must be taken in person, except that a referee may allow testimony to be taken by telephone or other electronically reliable means, in extraordinary circumstances.
- (4) An electronic or stenographic record must be kept of all hearings.

(E) Posthearing Procedures.

- (1) Within 21 days after a hearing, except for a hearing on income withholding, the referee must either make a statement of findings on the record or submit a written, signed report containing a summary of testimony and a statement of findings. In either event, the referee must make a recommendation for an order and arrange for it to be submitted to the court and the attorneys for the parties, or the parties if they are not represented by counsel. A proof of service must be filed with the court. If the recommendation for an order is approved by the court and no written objection is filed with the court clerk within 21 days after the recommendation is served on the attorneys for the parties, or the parties if they are not represented by counsel, the order will take effect.
- (2) If the hearing concerns income withholding, the referee must arrange for a recommended order to be submitted to the court forthwith. If the recommended order is approved by the court, it must be given immediate effect pursuant to MCL 552.607(4); MSA 25.164(7)(4).
- (3) A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing by filing
 - (a) a written objection and notice of hearing within 14 days after the referee's recommended order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order is for income withholding, or
 - (b) a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order concerns any other matter.
- (4) The party who requests a judicial hearing must serve the objection and notice of hearing on the opposing party or counsel in the manner provided in MCR 2.119(C).

(F) Judicial Hearings.

- (1) The judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause.

- (2) If both parties consent, the judicial hearing may be based solely on the record of the referee hearing.
- (3) If the court determines that an objection is frivolous or has been interposed for the purpose of delay, the court may assess reasonable costs and attorney fees.

Rule 3.216 Domestic Relations Mediation

(A) Scope and Applicability of Rule, Definitions.

- (1) All domestic relations cases, as defined in MCL 552.502(h); MSA 25.176(2)(h), are subject to mediation under this rule, unless otherwise provided by statute or court rule.
- (2) Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. This procedure, known as evaluative mediation, is governed by subrule (I).
- (3) This rule does not restrict the Friend of the Court from enforcing custody, parenting time, and support orders.
- (4) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Mediation Plan. Each trial court that submits domestic relations cases to mediation under this rule shall include in its alternative dispute resolution plan adopted under MCR 2.410(B) provisions governing selection of domestic relations mediators, and for providing parties with information about mediation in the family division as soon as reasonably practical.

(C) Referral to Mediation.

- (1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may submit to mediation by written order any contested issue in a domestic relations case, including postjudgment matters.
- (2) The court may not submit contested issues to evaluative

mediation unless all parties so request.

- (3) Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

(D) Objections to Referral to Mediation.

- (1) To object to mediation, a party must file a written motion to remove the case from mediation and a notice of hearing of the motion, and serve a copy on the attorneys of record within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the court orders otherwise.
- (2) A timely motion must be heard before the case is mediated.
- (3) Cases may be exempt from mediation on the basis of the following:
 - (a) child abuse or neglect;
 - (b) domestic abuse, unless attorneys for both parties will be present at the mediation session;
 - (c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
 - (d) reason to believe that one or both parties' health or safety would be endangered by mediation; or
 - (e) for other good cause shown.

(E) Selection of Mediator.

- (1) Domestic relations mediation will be conducted by a mediator selected as provided in this subrule.
- (2) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (G). The court must appoint a mediator stipulated to by the parties, provided the mediator is

willing to serve within a period that would not interfere with the court's scheduling of the case for trial.

- (3) If the parties have not stipulated to a mediator, the parties must indicate whether they prefer a mediator who is willing conduct evaluative mediation. Failure to indicate a preference will be treated as not requesting evaluative mediation.
- (4) If the parties have not stipulated to a mediator, the judge may recommend, but not appoint one. If the judge does not make a recommendation, or if the recommendation is not accepted by the parties, the ADR clerk will assign a mediator from the list of qualified mediators maintained under subrule (F). The assignment shall be made on a rotational basis, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned.
- (5) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(F) List of Mediators.

- (1) Application. An eligible person desiring to serve as a domestic relations mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.
 - (a) The form shall include a certification that
 - (i) the applicant meets the requirements for service under the court's selection plan;
 - (ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and
 - (iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (K).

- (b) The applicant shall indicate on the form whether the applicant is willing to offer evaluative mediation, and the applicant's hourly rate for providing mediation services.
 - (c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background; however, this section shall not be made available to the public.
- (2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.
 - (a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
 - (b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.
 - (c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.
- (3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
- (4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of

the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing.

(G) Qualification of Mediators.

- (1) To be eligible to serve as a domestic relations mediator under this rule, a applicant must meet the following minimum qualifications:
 - (a) The applicant must
 - (i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;
 - (ii) have a masters degree in counseling, social work, or marriage and family therapy;
 - (iii) have a graduate degree in a behavioral science; or
 - (iv) have 5 years experience in family counseling.
 - (b) The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.
 - (c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.
- (2) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (G)(1), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator.
- (3) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under subrule(F)(4).

- (4) Additional qualifications may not be imposed upon mediators.

(H) Mediation Procedure.

- (1) The mediator must schedule a mediation session within a reasonable time at a location accessible by the parties.
- (2) A mediator may require that no later than 3 business days before the mediation session, each party submit to the mediator, and serve on the opposing party, a mediation summary that provides the following information, where relevant:
 - (a) the facts and circumstances of the case;
 - (b) the issues in dispute;
 - (c) a description of the marital assets and their estimated value, where such information is appropriate and reasonably ascertainable;
 - (d) the income and expenses of the parties;
 - (e) a proposed settlement; and
 - (f) such documentary evidence as may be available to substantiate information contained in the summary.

Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the court.

- (3) The parties must attend the mediation session in person unless excused by the mediator.
- (4) Except for legal counsel, the parties may not bring other persons to the mediation session, whether expert or lay witnesses, unless permission is first obtained from the mediator, after notice to opposing counsel. If the mediator believes it would be helpful to the settlement of the case, the mediator may request information or assistance from third persons at the time of the mediation session.
- (5) The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely

to be reached, the end of the first mediation session, or until a time agreed to by the parties.

- (6) Within 7 days of the completion of mediation, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated. If an evaluation will be made under subrule (I), the mediator may delay reporting to the court until completion of the evaluation process.
- (7) If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.
- (8) Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to
 - (a) the report of the mediator under subrule (H)(6),
 - (b) information reasonably required by court personnel to administer and evaluate the mediation program,
 - (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
 - (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or 3.216(H)(2).

(I) Evaluative Mediation.

- (1) This subrule applies if the parties requested evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.
- (2) If a settlement is not reached during mediation, the mediator, within a reasonable period after the conclusion of mediation shall prepare a written report

to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court.

- (3) If both parties accept the mediator's recommendation in full, the attorneys shall proceed to have a judgment entered in conformity with the recommendation.
- (4) If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, mediator shall report to the court under subrule (H)(6), and the case shall proceed toward trial.
- (5) A court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither the parties nor the mediator may inform the court of the identity of the party or parties who rejected the mediator's recommendation.
- (6) The mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties' consent to read the mediator's recommendation.

(J) Fees.

- (1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.
- (2) Before mediation, the parties shall agree in writing that each shall pay one-half of the mediator's fee no later than:
 - (a) 42 days after the mediation process is concluded or the service of the mediator's report and recommendation under subrule (I)(2), or
 - (b) the entry of judgment, or
 - (c) the dismissal of the action,whichever occurs first. If the court finds that some

other allocation of fees is appropriate, given the economic circumstances of the parties, the court may order that one of the parties pay more than one-half of the fee.

- (3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (J)(2).
 - (4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate judgment under MCL 552.13(1); MSA 25.93(1) to enforce the payment of the fee.
 - (5) In the event either party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.
- (K) Standards of Conduct. The State Court Administrator shall develop and approve standards of conduct for domestic relations mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

Rule 3.217 Actions Under the Paternity Act

- (A) Governing Law. Procedure in actions under the Paternity Act, MCL 722.711 et seq.; MSA 25.491 et seq., is governed by the rules applicable to other civil actions except as otherwise provided by this rule and the act.
- (B) Jury Demand. In an action brought under the Paternity Act, either the mother or the alleged father may demand a trial by jury. MCR 2.508 governs the demand for and waiver of trial by jury.
- (C) Blood or Tissue Typing Tests. A petition for blood or tissue typing tests under MCL 722.716; MSA 25.496 must be filed at or before the pretrial conference or, if a pretrial conference is not held, within the time specified by the court. Failure to timely petition waives the right to such tests, unless the court, in the interest of justice, permits a petition at a later time.
- (D) Advice Regarding Right to an Attorney.

- (1) The summons issued under MCL 722.714; MSA 25.494 must include a form advising the alleged father of the right to an attorney as described in subrule (D)(2), and the procedure for requesting the appointment of an attorney. The form must be served with the summons and the complaint, and the proof of service must so indicate.
- (2) If the alleged father appears in court following the issuance of a summons under MCL 722.714; MSA 25.494, the court must personally advise him that he is entitled to the assistance of an attorney, and that the court will appoint an attorney at public expense, at his request, if he is financially unable to retain an attorney of his choice.
- (3) If the alleged father indicates that he wants to proceed without an attorney, the record must affirmatively show that he was given the advice required by subrule (D)(2) and that he waived the right to counsel.
- (4) If the alleged father does not appear in court following the issuance of a summons under MCL 722.714; MSA 25.494, subrule (D)(3) does not apply.

(E) Visitation Rights of Noncustodial Parent.

- (1) On the petition of either party, the court may provide in the order of filiation for such reasonable visitation by the noncustodial parent as the court deems justified and in the best interests of the child.
- (2) Absent a petition from either party, the right of reasonable visitation is reserved.

Rule 3.218 Access to Friend of the Court Records

- (A) General Definitions. When used in this subrule, unless the context indicates otherwise,
- (1) "records" means paper files, computer files, microfilm, microfiche, audio tape, video tape, and photographs;
 - (2) "access" means inspection of records, obtaining copies of records upon receipt of payment for costs of reproduction, and oral transmission by staff of information contained in friend of the court records;
 - (3) "confidential information" means

- (a) staff notes from investigations, mediation sessions, and settlement conferences;
 - (b) Family Independence Agency protective services reports;
 - (c) formal mediation records;
 - (d) communications from minors;
 - (e) friend of the court grievances filed by the opposing party and the responses;
 - (f) a party's address or any other information if release is prohibited by a court order;
 - (g) except as provided in MCR 3.219, any information for which a privilege could be claimed, or that was provided by a governmental agency subject to the express written condition that it remain confidential; and
 - (h) all information classified as confidential by the laws and regulations of title IV, part D of the Social Security Act, 42 USC 651 et seq.
- (B) A party, third-party custodian, guardian, guardian ad litem or counsel for a minor, lawyer-guardian ad litem, and an attorney of record must be given access to friend of the court records related to the case, other than confidential information.
- (C) A citizen advisory committee established under the Friend of the Court Act, MCL 552.501 *et seq.*; MSA 25.176(1) *et seq.*,
- (1) shall be given access to a grievance filed with the friend of the court, and to information related to the case, other than confidential information;
 - (2) may be given access to confidential information related to a grievance if the court so orders, upon clear demonstration by the committee that the information is necessary to the performance of its duties and that the release will not impair the rights of a party or the well-being of a child involved in the case.

When a citizen advisory committee requests information that may be confidential, the friend of the court shall notify the parties of the request and that they have 14 days from the date the notice was mailed to file a written response

with the court. If the court grants access to the information, it may impose such terms and conditions as it determines are appropriate to protect the rights of a party or the well-being of a child.

- (D) Protective services personnel from the Family Independence Agency must be given access to friend of the court records related to the investigation of alleged abuse and neglect.
- (E) The prosecuting attorney and personnel from the Office of Child Support and the Family Independence Agency must be given access to friend of the court records required to perform the functions required by title IV, part D of the Social Security Act, 42 USC 651 et seq.
- (F) Auditors from state and federal agencies must be given access to friend of the court records required to perform their audit functions.
- (G) Any person who is denied access to friend of the court records or confidential information may file a motion for an order of access with the judge assigned to the case or, if none, the chief judge.
- (G) A court, by administrative order adopted pursuant to MCR 8.112(B), may make reasonable regulations necessary to protect friend of the court records and to prevent excessive and unreasonable interference with the discharge of friend of the court functions.

Rule 3.219 Dissemination of a Professional Report

If there is a dispute involving custody, visitation, or change of domicile, and the court uses a community resource to assist its determination, the court must assure that copies of the written findings and recommendations of the resource are provided to the friend of the court and to the attorneys of record for the parties, or the parties if they are not represented by counsel. The attorneys for the parties, or the parties if they are not represented by counsel, may file objections to the report before a decision is made.